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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-fifth session

SUMMARY RECORD OF THE 19th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 16 August 1993, at 3.30 p.m.

Chairman: Mr. AL-KHASAWNEH

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The meeting was called to order at 3.40 p.m.

ELIMINATION OF RACIAL DISCRIMINATION

(a) MEASURES TO COMBAT RACISM AND RACIAL DISCRIMINATION AND THE ROLE OF THE SUB-COMMISSION

(b) MONITORING THE TRANSITION TO DEMOCRACY IN SOUTH AFRICA

(agenda item 5) (continued)

1. The PRESIDENT read out paragraph 2 of resolution E/CN.4/Sub.2/1993/L.3, as amended at the previous meeting:

> "Recommends that the Special Rapporteur carry out his mandate by examining situations in the various regions of the world, beginning with incidents which are increasing in the developed countries, as well as theories and attitudes of racial superiority which incite them."

2. Resolution E/CN.4/Sub.2/1993/L.3, as amended, was adopted.

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

(a) QUESTION OF THE HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

(b) QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY

(c) INDIVIDUALIZATION OF PROSECUTION AND PENALTIES, AND REPERCUSSIONS OF VIOLATIONS OF HUMAN RIGHTS ON FAMILIES

(d) THE RIGHT TO A FAIR TRIAL

(agenda item 10) (continued)

INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY, JURORS AND ASSESSORS AND THE INDEPENDENCE OF LAWYERS (agenda item 11) (continued)

3. Mr. PAZ (Service, Peace and Justice in Latin America) said that the cases of Ecuador and Peru illustrated the situations covered by items 10 and 11 of the Sub-Commission's agenda. In Ecuador, charges of torture and arbitrary arrests had been increasing in recent years and, according to the Ecumenical Commission on Human Rights, impunity was commonplace. One example was the case of the Restrepo brothers, whom the police forces had caused to "disappear" and had then tortured and murdered in 1988. Five years later, that case, as well as the case of Consuelo Benavides, murdered in 1985, were still pending before the Supreme Court. In addition, some 20 people were reported to have disappeared between 1988 and 1993. The number of complaints of torture was increasing, especially from poor people. In the past year, the Ecumenical Commission on Human Rights had reported 160 cases of torture or physical ill-treatment in prison and 188 arbitrary arrests by police officers, some 30 of which had involved minors between 12 and 16 years of age. Four of the people arrested had died after being tortured by the police. According

to several accounts, the torture - immersion in a water tank, exposure to tear-gas, electric shocks, not to speak of kicking and punching - was practised in a place called La Terraza. He denounced the extremely harsh treatment of poor people by the police and judicial system, in sharp contrast to the negligence of those in charge of investigating crimes against humanity. He also strongly protested against the fact that the perpetrators of human rights violations were tried by military courts, which usually acquitted them.

4. In Peru, the recent adoption of a constitutional text authorizing the death sentence for treason or terrorism was particularly questionable. The extension of capital punishment to offences not provided for in the Constitution - which allowed the death sentence for treason only in the context of a foreign war - was particularly disturbing. It was tantamount to a denouncement of the American Convention on Human Rights and placed Peru outside the pan-American legal system. It also terminated Peru's recognition of the Inter-American Human Rights Commission and Court. Henceforth, a regime that had subjugated Congress, interfered with the judiciary and had as Attorney-General of the Nation an official appointed by the Executive could order the death sentence, in disregard for the primacy of the rule of law, which thus no longer existed.

5. To illustrate how the situation in Peru had developed, he cited the detention and subsequent disappearance of a professor and nine students from the University of La Cantuta, which had been reported by a deputy and a general, the latter having taken refuge in Argentina. Clandestine graves had been discovered, indicating that disappeared persons might be buried in them, but nothing was being done to identify the bodies. In such a context, he deeply regretted the fact that an entire arsenal of anti-terrorist laws had culminated in the death penalty and that the offence of treason could be applied very broadly to labour or social conflicts, as had happened in the case of the San Ignacio peasants, who had been accused of terrorism for fighting to defend their forest. The law adopted also made it possible to convict minors (under 18 years of age), who might therefore be liable to the death penalty. In addition, defence rights were no longer guaranteed and incommunicado detention might be extended. There were other, equally disturbing developments, such as the prohibition of the remedy of habeas corpus and the fact that the procedure for charging a person with treason had to be completed within 10 days. He also strongly criticized the fact that the military courts had been enabled to pass death sentences, a situation that deprived the judiciary of its independence and gave serving officers judges' powers, for which they were not trained. The armed forces in charge of combating subversion would therefore be the same ones in charge of investigating, trying and sentencing, which went against the principle of impartiality.

6. Between August 1992 and January 1993, 150 persons had been tried, 131 of whom had been found guilty; 104 of those convicted had been sentenced to life imprisonment. At the very moment that he was speaking to the Sub-Commission, he might very well be on trial in absentia in Peru. While acknowledging the legitimacy of combating terrorism, he strongly criticized the methods used. He drew the Sub-Commission's attention to the case of Ernesto Castillo Paez, a "disappeared" student whom he had defended. Since the 5 April coup d'état the case had been closed, like the case involving the attack against himself,

which had resulted in the amputation of his left arm. Although he himself had been a victim, he rejected the death penalty and protested against the invasion of authoritarianism and the presence of the military in the civilian domain.

7. Mr. TEITELBAUM (American Association of Jurists) expressed his concern at Security Council resolution 827 (1993) and the report of the Secretary-General (S/25704) on which it was based. According to that resolution, the Security Council decided to establish an international tribunal for the sole purpose of prosecuting persons alleged to be responsible for serious violations of international humanitarian law in the territory of the former Yugoslavia, between January 1991 and a date as yet undetermined. His organization believed that that was the very negation of what an independent and impartial court should be. Even more serious, the Security Council was exceeding its powers at the expense of those of the General Assembly. Not only had the Security Council taken no account of General Assembly resolution 46/54, in which the Assembly reserved to itself the right to provide guidance for the possible establishment of an international criminal court, but the Council had also ignored the decisions of the Assembly which, in 1948, had recommended that the International Law Commission should look into the question of establishing an international criminal court.

8. According to Mr. Singhvi's report on the independence and impartiality of the judiciary (E/CN.4/Sub.2/1985/18), the temporary nature of a court impaired its independence and impartiality. What was more, the limited competence (in time and space) of the tribunal envisaged by the Security Council gave it all the features of a court of special jurisdiction. It should not be forgotten that there were other places in the world where serious human rights violations were being committed, the perpetrators of which deserved to be punished.

9. The tribunal in question, set up for a specific purpose, was designed to distract the public's attention from the fact that the major Powers could not or would not resolve the problems of the former Yugoslavia; that was very frustrating for those who had long been advocating an international criminal court whose establishment, structure, composition, competence and jurisdiction would be the result of a broad consensus in the international community and would be based on the legal equality of all States. He wished particularly to draw attention to two points which, he thought were legal aberrations. First, in its resolution 827 (1993) the Security Council invoked Chapter VII of the Charter of the United Nations, thus assimilating the establishment of a tribunal to a coercive measure. The other, related, aberration appeared in paragraph 28 of the Secretary-General's report accompanying the resolution: the tribunal would be a subsidiary organ of the Security Council, or more precisely of those on the Council who held the decision-making power.

10. When military courts went beyond their functions - which was to try specifically military offences - and tried military personnel for ordinary offences or tried civilians, the question of the independence and impartiality of the courts arose. First, because such a court, by its very nature, became a personal court, which was contrary to democratic principles. It was a fact that military courts, where the team spirit prevailed, always tended to exonerate their own, even when they had committed serious human rights

violations. It was also a fact that the attempts of a few civilian Governments to encourage the armed forces to reform themselves had always failed. Furthermore, when military courts tried civilians, the result was too often a travesty of justice, since such courts simply carried out the purposes of the authority to which they were answerable. They were, consequently, incapable of impartiality and favoured impunity for the perpetrators of human rights violations. He quoted, in that connection, the 1985 report of the Inter-American Commission on Human Rights, which stated that military courts could not guarantee the right to justice because they lacked independence and showed bias. He also referred to the 1990 report of the Special Rapporteur on questions relevant to torture and to the Declaration on the Protection of All Persons from Enforced Disappearance, adopted by the General Assembly in 1992, article 16 of which expressly prohibited military courts from participating in trials of alleged perpetrators of disappearances.

11. Peru was an eloquent example of the corruption that would ensue from intervention by military courts in cases that exceeded their competence. It was particularly absurd that military personnel and police officers accused of drug-trafficking should be tried by a military court; the military courts in Peru had for the most part become an instrument of impunity. His organization thus requested the Sub-Commission to adopt a resolution clearly stating that the competence of military courts should be limited exclusively to military offences.

12. Ms. ASSAAD (International PEN) drew the Sub-Commission's attention to the anti-terrorist legislation in force in Turkey, Peru and India, which made it possible to imprison writers and journalists in flagrant violation of article 19 of the Universal Declaration of Human Rights, which guaranteed freedom of opinion and expression. While recognizing the legitimacy of anti-terrorist legislation where situations were acute, her organization was concerned that such legislation should not violate fundamental freedoms, such as the right to freedom of expression.

13. Although the new Turkish Government had, in October 1991, announced its commitment to human rights and minority rights, it had constantly violated the right to freedom of expression. Of particular concern was the adoption of the Law to Fight Terrorism (Decree No. 3713) of 1991. The Law gave a wide interpretation to the term "terrorism" and provided for the prosecution of journalists and writers for publishing articles deemed to support it. One of its articles - article 8 - stipulated a prison sentence of up to five years for "disseminating separatist propaganda", i.e. discussing Kurdish political or cultural issues. The Law had been used to justify censorship of the Kurdish question: scores of journalists and writers had been arrested since its adoption. In August 1993, at least 25 writers and journalists had been sentenced to prison terms of up to five years under articles 6 and 8 of the Law. Three of them were currently in prison.

14. In Peru, the new anti-terrorist decrees - Nos. 25 475, 25 659, 25 880, 25 744 and 25 824 - allowed for arbitrary detention and could be used to silence writers and journalists. Factors which could be used arbitrarily to detain people under the new legislation included the following: the denial of bail; the granting of virtually unlimited powers to the police in questioning suspects and making charges; the limitations placed on judges, who could not

order a detainee's release but had to refer the case to a higher court; the fact that detainees could be held from 15 months to 5 years in pre-trial detention; the inability of the detainee to challenge his or her detention before trial; the fact that those accused of treason must be tried in a period of only 10 consecutive days and the fact that trials were held in secret in a prison and presided over by hooded judges. Several writers and journalists had been detained since the adoption of those laws; at least seven were still detained. There often appeared to be little if any evidence against them. The fact that three other writers had been released after being held under those laws for periods of up to a year underlined the fact that they were used for arbitrary detention and censorship of free expression.

15. In India, the wide interpretation of the term "terrorism" under the Terrorist and Disruptive Activities (Prevention) Act (TADA) was used to arrest persons for a broad range of offences. Section 4 of the Act provided penalties ranging from five years to life imprisonment for disruptive activities, i.e. "any action taken, whether by act or by speech or through any other media ... (i) which questions, disrupts or is intended to disrupt, directly or indirectly, the sovereignty and territorial integrity of India; or (ii) which is intended to bring about or support any claim, whether directly or indirectly, for the cession of any part of India or the secession of any part of India from the Union.". However, journalists had been arrested under the TADA solely for writing on the issue of secession. Her organization was currently following the cases of three journalists facing trial under the Act and was also concerned by reports that detainees had suffered ill-treatment. Trials of those accused under the TADA fell short of internatical standards for fair trial. For instance, they were held in camera and witnesses' identities were not disclosed. Bail was extremely difficult to obtain. Her organization thus called upon the members of the Sub-Commission to take into consideration its concerns regarding violations of freedom of expression contained in anti-terror legislation in Turkey, Peru and India and to work towards bringing those countries to amend their legislation so as to guarantee that internationally-recognized right.

16. Ms. PARKER (International Educational Development) said that her organization was concerned at the situation of detainees, particularly prisoners of war, in a number of countries. For example, many cases of torture and ill-treatment had been reported in Kashmir. In its Country Reports of 1991, the United States Department of State said that the torture of detainees was common there. In addition, the Indian authorities failed to protect the rights of prisoners of war in conformity with the fundamental principles of humanitarian law. Prisoners of war were usually either killed on the spot or died after being interrogated under torture. There was complete disregard for all other rights of combatants, including the right to receive humanitarian assistance such as food or medical care.

17. Arrests and detention of civilians and torture of detainees were also common practices in Acheh, in northern Sumatra. Because of the ongoing armed conflict in Acheh, those practices must be regarded as war crimes. It should be noted that the Indonesian military authorities completely disregarded the rights and guarantees to which Acheh prisoners of war were entitled under humanitarian law. Her organization also noted that serious violations of the laws of armed conflict and human rights law were still being committed in

Kurdistan; violations of the right of Kurds in Turkey not to be arbitrarily detained or tortured should also be seen in the context of the ongoing war in that region. She hoped that those three examples would draw the attention of the Sub-Commission to the serious plight of prisoners of war throughout the world.

18. Her organization also considered that the arrest of persons for promoting human rights or participating in peaceful protests was an arbitrary measure per se. Mass arrests had been occurring in Bhutan as a result of the 1989 founding of the human rights movement and the peaceful rallies which had been held since 1990. There had been countless reports of torture, rape and serious mistreatment. The 1988 introduction of laws severely curtailing the rights of southern Bhutanese people, who were mainly of the Nepali ethnic group, had been the first step in an escalating situation of violations. Over 100,000 Bhutanese had fled the country and, since the proclamation of martial law throughout southern Bhutan in 1990, the right of assembly, freedom of speech and the right to a fair trial had been suspended. Her organization urged the Sub-Commission to look into the human rights situation in Bhutan. In China, the frequently employed measure of administrative detention, for periods of up to three years, was a breach of the most fundamental principles of human rights. She drew the Sub-Commission's attention to the case of Fu Shen-Qi, who had been imprisoned for four years in 1979 for publishing a magazine and again arrested on 26 June 1994 and sentenced to three years of "re-education through labour" - an official term used to disguise administrative detention - for inciting trouble and for speaking to foreign journalists accompanying the Prime Minister of Australia on his visit to China. Lastly, her organization had also worked on the case of Mr. Doan Viet Hoat, who had been imprisoned for 12 years, from 1976 to 1988, on returning to his country, Viet Nam, because he had been studying in the United States, and rearrested in 1990 for publishing a news letter calling for reforms to the Constitution and laws to allow the people of Viet Nam more freedom. Acting on Mr. Doan's wife's request, her organization had tried to send three United States attorneys to Viet Nam to defend him, but they had been denied entry visas. Mr. Doan had been sentenced to 20 years' hard labour and loss of citizenship for 5 years afterwards.

19. Lastly, her organization would like to remind the Sub-Commission that Leonard Peltier and Geronimo Pratt, two political prisoners in the United States, were still in detention, and that Gary Graham - a minor at the time of the crime for which he had been convicted - was scheduled to be executed on 17 August 1993. If that execution was carried out, it would be in direct violation of the ruling of the Inter-American Commission on Human Rights on the case. She urged the Sub-Commission to adopt a resolution emphasizing the obligation of all countries to comply with the decisions of regional and United Nations human rights bodies.

20. Mr. SALL (Pax Christi International) said that he had been a history professor in the Faculty of Literature and Social Sciences at Nouakchott, Mauritania, and that he had been living in exile since 1990, after serving a four-year prison term, from 1986 to 1990. He had been arrested, together with other Black African intellectuals and executives, for publishing a document entitled: "The manifesto of the oppressed Black Mauritanian", criticizing the policy of racial and cultural discrimination and ethnic exclusion against

their community in Mauritania. He had been taken to the police school and locked for two days in an empty, damp cell guarded by a police officer armed with an automatic pistol. During his seven-day interrogation, from 6 to 13 September 1986, he - like the persons arrested with him - had been subjected to various forms of torture, in order to make him confess that he was one of the authors of the manifesto and that the authors were preparing a coup d'état to set up a Black government with the help of the State of Israel. The trial, which had been held on 14 September, was a veritable parody of justice from the pre-trial proceedings to the conviction and had been boycotted by the lawyers, who had not been permitted to consult their clients' files. Among the 23 defendants were two sisters, Fatima Mbaye and Pini Sao, who had been raped by Police Inspector Kerani. Most of the detainees had been sentenced to five years' imprisonment without remission, together with a fine, loss of civil and political rights and prohibition against living in all the administrative regions, with the exception of the south, for 10 years. The Sao sisters had been sentenced to six months' imprisonment without remission and the charge their family had filed against Inspector Kerani had never been followed up.

21. He and the other convicted prisoners had been taken to the civilian prison at Nouakchott, where they had undergone rigorous imprisonment for 13 months. During that time, their families had been evicted from their homes and their wives had been dismissed from their positions in the civil service. Their conditions of detention had worsened after the arrest of Black African soldiers charged with plotting against the security of the State, in the company of whom they had been transferred to Walata, 1,500 km from Nouakchott, where they had been held in a former colonial fort from December 1987 to March 1988 under inhuman and degrading conditions. They had been shut up in a room 15 m x 2 m, constantly in chains, unlike the imprisoned Moors, and the lack of hygiene had very quickly caused them to come down with diseases such as scabies, scurvy, beriberi and parasitosis. In addition, they had to perform forced labour (road building, carrying water) from which the white Moors (Beydanes) were exempted, and underwent torture sessions, especially at night. The most horrible form of torture was mock execution, of which he himself had been the victim on 4 January 1988, for protesting against the fetters, which were making his ankles bleed. After being tortured for several hours, he had been forced to stand in the courtyard, naked and bloody, for 12 hours, as an example to the others. A number of detainees had died as a result of such ill-treatment, including the writer Tené Youssouf Gueye, who had been the representative of Mauritania to the United Nations in 1963, Djigo Tafsirou, former Minister of Health, Ba Abdoul Ghoudouss, a lieutenant in the engineering corps, and Warrant-Officer Ba Alassane Oumar. The governmental authorities had been regularly informed of what was happening at Walata and, under pressure from international opinion, had finally sent missions of inquiry. In the name of all those who had been held at Walata, he thanked the non-governmental organizations, which had carried out a major sensitization and mobilization effort to save those who were still alive, particularly Amnesty International, the International Federation of Human Rights, Africa Watch and the Association for Victims of Repression in Exile. While he was in prison, his wife, who had been an inspector of customs, had been deported to Senegal, and their children, aged 10, 8 and 6 years, had been

left to fend for themselves. That measure formed part of a policy aimed at destroying the ethnic cohesion of the Black Africans through the family unit, which was the very foundation of any society.

22. In conclusion, he urged everyone fighting individually or collectively for human rights to remain vigilant in order to save lives, for the authorities of a country often changed their behaviour as disapproval from international public opinion increased. Pax Christi International asked the Sub-Commission to inquire into human rights violations in Mauritania, especially the extrajudicial executions of Black people in 1990-1991, some of the victims of which had formerly been detainees at Walata and El Aaiun.

23. Mr. DESPOUY, introducing his sixth annual report on human rights and states of emergency (E/CN.4/Sub.2/1993/23), recalled that his mandate included the tasks of drawing up and updating annually a list of countries which proclaimed or terminated a state of emergency; examining, in annual reports, questions of compliance by States with internal and international rules guaranteeing the legality of the introduction of a state of emergency; studying the impact of emergency measures on human rights and recommending measures with a view to guaranteeing respect for human rights in situations of state of siege or emergency.

24. By drawing up the list of States which had proclaimed, extended or terminated a state of emergency, he had endeavoured to provide a comprehensive view of the world situation on the basis of information he had received from various sources indicating that, since 1 January 1985, a state of emergency had been proclaimed, extended or terminated in 83 States, which were listed in paragraph 15 of the report. He had taken note of proposals made in the communications he had received from States and international organizations in reply to his request for information and others made at recent sessions of the Commission on Human Rights and the Sub-Commission. In particular, it had been recommended that he should attempt to determine which human rights most frequently risked being affected by the proclamation of a state of emergency and to indicate which ones actually were affected, in particular by giving the number of detainees or persons expelled and also by focusing on the relevant legislation and its effects on human rights. He had noted on the basis of the information provided, particularly by the Working Group on Detention, that the right to freedom of movement was generally the most in jeopardy. He had also been asked to monitor closely the implementation of Commission on Human Rights resolution 1992/35 calling upon all States to maintain the remedy of habeas corpus under all circumstances, including during states of emergency, and to improve the system for reporting states of emergency to other States. He had endeavoured to implement that recommendation during the attempted coup d'etat that had taken place in August 1991 in the former USSR, and he wished to thank the authorities of the Russian Federation, who had invited him to come to Russia to analyse the conditions in which the state of emergency had been introduced and the emergency measures adopted.

25. Both the Commission on Human Rights and the Sub-Commission had repeatedly requested him to examine in depth those situations of crisis in which Governments had adopted exceptional measures, without a state of emergency being officially proclaimed, and the negative impact of such a situation on human rights as a whole. He had therefore decided to study the case of Haiti,

which was a clear illustration of the sharp deterioration that resulted from "de facto states of emergency". Thus he had devoted a number of the paragraphs of his report to Haiti, where he had spent five months as an assistant to the special representative of the Secretary-General. The Constitution of Haiti provided for states of emergency, but Haiti was also a party to the International Covenant on Civil and Political Rights and the American Convention on Human Rights, articles 4 and 27 respectively of which regulated states of emergency and established those principles and guarantees which all States parties must observe. Those instruments had been incorporated into Haitian domestic law; however, following the coup d'état of 1991 countless restrictions and limitations of human rights had been introduced by the de facto authorities, without a state of siege having been officially proclaimed, which showed that there could be such a thing as a covert state of emergency (paras. 26 to 45 of the report).

26. Chapter IV of the report, on the functions of Parliament during a state of emergency, set out the various principles that governed the proclamation of a state of emergency and contained the recommendations he had made to an Inter-Parliamentary Symposium on "Parliament: Guardian of Human Rights", which had been held at Budapest from 19 to 22 May 1993. They stressed the importance of Parliament being able to perform its role regarding both the proclamation and lifting of a state of emergency, regarding the identification of rights which might be derogated from during the state of emergency and regarding the monitoring of the activities of authorities invested with exceptional powers, notably the security forces and police. It was essential in particular that the Constitution should prohibit the dissolution and even the suspension of Parliament during a state of emergency, so that Parliament could act as a safeguard against abuses. The fifth and last chapter of the report concerned the contacts which he had established with various competent institutions, including UNHCR and ILO, which had participated in a meeting of experts organized by him on 2-3 March 1993 at the Palais des Nations, Geneva, concerning the establishment of a database on states of emergency and questions relating to human rights (paras. 88-95).

27. Mr. WAREHAM (International Association Against Torture) said that despite the "triumph of democracy" in Latin America, violations of human rights still abounded. In Chile, for example, three years after the Parliament had begun to take steps to liberate political prisoners, there were still 19 political prisoners remaining from the Pinochet era. The National Information Centre (CNI) had been replaced by the "Public Security Agency" which carried out the same repressive tasks. Thus, since March 1990, 138 political prisoners had been incarcerated. The findings of a study by his organization on political prisoners' conditions of detention included the following facts: women were imprisoned in male prisons and police forces were still using cruel, inhuman or degrading treatment or punishment during interrogation. AICT asked that the Sub-Commission should recommend the reappointment of a special rapporteur on Chile.

28. In Guatemala, a spokesman for the new President had conceded that numerous secret prisons existed. Those clandestine prisons and their prisoners of war were soon to be investigated by the Inter-American Commission on Human Rights. In Guatemala, there were frequent attacks on civilians, the independence of the judiciary was compromised and some judges had received

death threats. His organization asked the Sub-Commission to request the Commission on Human Rights to appoint a special rapporteur on Guatemala.

29. As for the United States, two points should be made: that it was involved in the human rights violations committed in the countries he had mentioned through the financial and political support which the United States Government provided to their Governments; and that, in the domestic sphere, the quality of life in Black and Latino communities was so precarious that it could not fail to breed crime, with the result that inmates in the United States prison system were almost exclusively Black and Latino. Two recent examples were particularly revealing of the way in which the State sanctioned criminal behaviour by law-enforcement personnel. The first was the beating of Rodney King, a Black United States citizen, by 11 White Los Angeles police officers. Of the 11, only 4 had been indicted for the crime. At the first trial, all four officers had been acquitted and it had taken riots by part of the city's population to persuade the United States justice system to hold a second trial at which three of the four officers had been convicted of violating Rodney King's civil rights. The second case involved the killing of two Black men by a police officer in Miami. The deaths had led to days of riots in some areas of the city. Following a trial in first instance, the police officer had been convicted. The second trial, on appeal, had been held in a conservative, racist jurisdiction and the officer had been acquitted. The only conclusion that could be drawn from those two cases was that, barring extraordinary circumstances, criminal behaviour by police officers in communities of colour would go unpunished.

30. Regarding conditions of detention, there had been inmate riots in various parts of the United States over the past year. The most recent had been at a maximum security prison in Ohio, where an agreement had been reached after an 11-day confrontation during which 9 inmates and 1 guard had died. According to the New York Times, prisoner demands had related to transfer policies, the availability of prison education and vocational programmes and visitation, telephone and mail privileges. In general, they had reflected concerns about the arbitrariness of some staff members in enforcing the rules of the institution. Lastly, his organization would like to mention another disturbing trend in United States detention facilities: the increase of "suicides" by hanging among young Black male detainees. Some testimony suggested that the deaths might have been the result of lynchings rather than suicide.

31. In another category, the United States still refused to acknowledge that it was holding some 200 political prisoners. Several of them, for no reason other than their refusal to renounce the politics that had led to their arrest and incarceration, were scheduled to be transferred to a maximum security prison currently under construction in Arizona. His organization wished to bring to the Sub-Commission's attention the case of Mumia Abu-Jamal, a former member of the Black Panther Party and journalist, who was currently on death row in Pennsylvania for the murder of a police officer. Mr. Mumia had been the victim of torture, violation of the right to a fair trial and political persecution. The Association urged the Sub-Commission to add its voice to the many that were endeavouring to have Mumia's death sentence overturned. It should be noted, in that connection, that President Clinton favoured the adoption of a new law introducing the death penalty for 50 more offences. In

addition, when the United States had ratified the International Covenant on Civil and Political Rights, it had reserved to itself the right not only to maintain the death penalty, but to continue to apply it to children under 18 years of age. Under its agenda item on the right to a fair trial, the Sub-Commission should refer to studies demonstrating the fact that the death penalty in the United States was applied more often to Black people than to White people.

32. Finally, there appeared to be an emerging trend gradually to diminish the definition of "cruel, inhuman or degrading treatment or punishment". When the United States had acceded to the International Covenant on Civil and Political Rights, it had made reservations restricting its adherence to article 7 to the limits imposed by the "cruel and unusual treatment or punishment" prohibited by the Fifth, Eighth and Fourteenth amendments to the United States Constitution. The criteria set by those amendments fell far short of the requirements set by international standards.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (agenda item 6) (continued) (E/CN.4/Sub.2/1993/12-14 and 37; E/CN.4/Sub.2/1993/NGO/3, 5 and 18)

33. Mr. ALFONSO MARTINEZ said that, at the 13th meeting of the current session, he had informed the members of the Sub-Commission of a disturbing situation at Laredo, Texas, in the United States. A hunger strike by 13 members of United States religious organizations was in progress there to protest against the confiscation by the United States Customs Service of some of the goods they were sending to Cuba as a donation to Cuban religious establishments. A representative of the strikers had made attempts to meet officials of the United States Department of Commerce, to no avail. Consequently, those people had not been eating for 17 days, and there was among them an 86-year-old man, whose health was beginning to give cause for concern. In addition, according to his information, no contact with the hunger-strikers was possible. Thus, 15 people who had tried to approach them had been arrested by the United States authorities. He asked the Sub-Commission, to contact the competent authorities, through its Chairman, for the sole purpose of requesting official information on the matter.

34. Mrs. CHAVEZ said that, in her view, there were numerous incidents throughout the world that deserved as much, if not more, the Sub-Commission's attention. The Sub-Commission had already wasted a lot of time on a case that had been fully covered in the United States press. It appeared that the people concerned had begun their hunger strike two days before arriving at Laredo, after announcing it with much fanfare in the press. The people in question were United States citizens who wished to express their views through civil disobedience, which they were free to do in the United States without risking prison.

35. The CHAIRMAN asked whether he could nevertheless take it that Mrs. Chavez was not opposed to the proposal by Mr. Alfonso Martinez.

36. Mrs. CHAVEZ said that the implications of such a step were too broad for a relatively minor incident such as the one under review. For example, the Sub-Commission had not asked its Chairman to make official contact with any authority whatsoever in the case of Bosnia and Herzegovina. In her view it would be sufficient to ask the United States Government for information unofficially, and she had no doubt that that Government would be pleased to reply.

37. Mr. JOINET pointed out that the Sub-Commission did not have to take a decision. The case was a simple one: one of its members could ask a Government for clarifications. It was for the Government to reply or not to reply. No official intervention by the Chairman was necessary.

38. Mr. ALFONSO MARTINEZ said that the case in question was not an ordinary one. The situation could well endanger the right to life of 13 people. Although it was obviously not at all comparable to the situation in Bosnia and Herzegovina, the issue was not totally lacking in importance. After his statement at the 13th meeting of the current session, he had hoped, that the United States Government would provide some explanations. It had not done so. He was not asking the Sub-Commission to take a decision on the substance of the matter, but simply to decide officially to ask the United States Government for information. The latter was free to reply or not to reply.

39. The CHAIRMAN asked whether he could take it that there was a consensus in the Sub-Commission regarding the proposal by Mr. Alfonso Martinez.

40. Mr. JOINET said that he would join a consensus if a precedent existed.

41. Mr. ALFONSO MARTINEZ said that there had been precedents in similar situations concerning the human rights of detainees.

42. Mrs. PALLEY asked whether the decision might be postponed until the secretariat confirmed that a precedent existed. If not and if the Sub-Commission adopted the proposal, any member would in future be able to make the same type of proposal for any situation he or she felt to be serious which, she considered, would be disturbing.

43. The CHAIRMAN said that a precedent did exist in the case of Canada.

44. Mr. GUISSE said that, in his view, the Canadian case was not comparable to the issue under consideration. The Canadian delegation had agreed to discuss the case with the members of the Sub-Commission and to inform its Government. The Government had then provided the Sub-Commission with information through its delegation, and the Sub-Commission had then decided not to continue its consideration of the issue. In his view, the United States delegation should be authorized to participate in the discussion.

45. The CHAIRMAN said that, since no consensus seemed to be emerging, the proposal by Mr. Alfonso Martinez would have to be put to a vote.

46. Mrs. CHAVEZ said she would be happy to support the proposal if Mr. Alfonso Martinez would also support an official request for information

from the Cuban Government, concerning 13 political prisoners being detained in Cuba, whose names appeared in the 1993 Amnesty International report.

47. Mr. ALFONSO MARTINEZ said that the two cases were totally different. Cuba had, in fact, officially replied to the allegations regarding those 13 people in the context of the procedure under Economic and Social Council resolution 1503 (XLVIII). The United States, on the other hand, had not yet officially replied to the requests for information on the Laredo case.

48. Mrs. PALLEY, speaking on a point of order, said she hoped that the Sub-Commission would not vote either on the proposal by Mrs. Chavez or on that by Mr. Alfonso Martinez.

49. Mr. ALFONSO MARTINEZ said he would like Mrs. Palley to explain her point of order. He was not clear whether she was proposing that the Sub-Commission should do nothing at all, should do nothing until the Government of the United States had provided information or do nothing until the Secretariat had confirmed that a precedent existed. If no action was taken, the health and even the lives of certain people might be at stake. He wondered whether Mrs. Palley was prepared to accept that responsibility.

50. Mrs. PALLEY explained that she was purely and simply proposing that the Sub-Commission should end the discussion and take no decision on either of the two proposals. The people conducting the hunger strike were perfectly free to continue with it or not and could thus fully assume their responsibilities.

51. At the request of Mr. Yimer, a vote was taken by roll-call on Mrs. Palley's proposal.

52. Mrs. Chavez, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Mr. Bossuyt, Mrs. Chavez, Mr. Eide, Mr. Hatano, Mr. Khalifa, Mrs. Palley.

Against: Mr. Alfonso Martinez, Mr. Chernichenko, Mr. Heller, Mr. Joinet, Mr. Ramadhane, Mr. Tian Jin.

Abstaining: Mr. Despouy, Mr. Muksum-Ul-Hakim, Mr. Maxim, Mr. Saboia.

53. There were 6 votes in favour, 6 against and 4 abstentions.

54. The proposal was not adopted.

55. Mrs. PALLEY, supported by Mr. CHERNICHENKO and Mrs. KSENTINI, requested that Mr. Alfonso Martinez and Mrs. Chavez should read out their respective proposals.

56. The CHAIRMAN asked Mr. Alfonso Martinez and Mrs. Chavez to read out their proposals.

57. Mr. ALFONSO MARTINEZ read out the following proposal: "The Sub-Commission invites its Chairman to request the competent authorities of

the United States of America to provide official information to the Sub-Commission on the incident that took place on 29 July 1993 in Laredo, Texas, in connection with a donation intended for religious institutions in Cuba, which resulted in a hunger strike maintained for 17 days by 13 persons who considered that they were prevented from exercising their civil rights and whose health was deteriorating".

58. Mrs. CHAVEZ read out the following amendment to the proposal by Mr. Alfonso Martinez: "The Sub-Commission equally invites its Chairman to request the competent authorities of Cuba to provide official information concerning the status and condition of the following persons who have been detained by the Government during the past year and a half: Sebastián Arcos Bergnes, José Luis Pujol Irizar, Elizardo Sánchez Santa Cruz, Lázaro Loreto Perea, Rodolfo González, Marco Antonio Abad Flamand, Jorge Crespo Diaz. Michael Pérez Pérez, Yndamiro Restano Díaz, Bienvenido Martinez Bustamante, Luis Alberto Pita Santos and Arturo Suárez Ramos".

59. Mr. ALFONSO MARTINEZ said that in his view the proposal by Mrs. Chavez was not an amendment to his own proposal since it had nothing to do with it.

60. At the request of Mr. Alfonso Martinez, a vote was taken by roll-call on the amendment by Mrs. Chavez.

61. Mr. Heller, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Mr. Bossuyt, Mrs. Chavez, Mr. Eide, Mr. Muksum-Ul-Hakim Mrs. Palley.

Against: Mr. Alfonso Martinez, Mr. Heller, Mrs. Ksentini, Mr. Ramadhane, Mr. Sachar, Mr. Tian Jin.

Abstaining: Mr. Chernichenko, Mr. Despouy, Mr. Yokota, Mr. Joinet, Mr. Khalifa, Mr. Maxim, Mr. Saboia.

62. The amendment was rejected by 6 votes to 5, with 7 abstentions.

63. At the request of Mrs. Chavez, a vote was held by roll-call on the proposal by Mr. Alfonso Martinez.

64. Mr. Saboia, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Mr. Alfonso Martinez, Mr. Muksum-Ul-Hakim, Mr. Heller, Mr. Ramadhane, Mr. Sachar, Mr. Tian Jin.

Against: Mr. Bossuyt, Mrs. Chavez, Mr. Eide, Mrs. Palley.

Abstaining: Mr. Chernichenko, Mr. Despouy, Mr. Hatano, Mr. Joinet, Mr. Khalifa, Mr. Maxim, Mr. Saboia.

65. The proposal by Mr. Alfonso Martinez was adopted by 6 votes to 4, with 7 abstentions.

66. The CHAIRMAN asked whether any of the experts wished to explain their votes.

67. Mr. JOINET said that it was like being back in the good old days of the cold war, when the members used to batter away at one another with resolutions and the Sub-Commission became bogged down in endless procedural debates. He had abstained in order to show his disapproval of such squabbles.

68. Mr. EIDE said that he was not against the Sub-Commission's using a more rapid procedure for communicating in cases of serious human rights violations, but in his view there were numerous human rights violations occurring throughout the world that were much more serious than the ones denounced by Mr. Alfonso Martinez and Mrs. Chavez. He also feared that the precedent created by the proposal by Mr. Alfonso Martinez would result in many hunger strikes. Nevertheless, it might be useful for the Sub-Commission to reflect on how to improve that type of procedure.

69. Mr. SABOIA said that he had abstained on all three of the votes because he had not liked the turn the discussion had taken. Although the proposal by Mr. Alfonso Martinez had a sincerely humanitarian basis, it was nevertheless extremely difficult to disregard the political connotations of the texts which the members had been asked to adopt. He also believed that decisions should not be taken lightly when the establishment of a new procedure was at issue.

70. Mrs. CHAVEZ said that it was in no way her intention to revive the cold war, but numerous human rights violations that were much more serious than those mentioned by Mr. Alfonso Martinez were being committed throughout the world. By rejecting her amendment, the Sub-Commission risked implying to the Cuban Government and the Cubans themselves that it was not interested in the plight of prisoners of opinion in Cuba. It should be recalled in that connection that the Cuban authorities had refused to authorize the Sub-Commission's Special Rapporteur to set foot on Cuban territory.

71. Mr. KHALIFA said that it was not for him to say whether or not the decision the Sub-Commission had taken on Canada the previous year represented a precedent. In any event, the discussion had taken place in a very different atmosphere from the current one. That was why he had supported Mrs. Palley's proposal. That proposal having been rejected, he had naturally abstained on the two votes that had followed.

72. Mr. CHERNICHENKO said that he had voted against Mrs. Palley's motion since he believed that, though there might be exceptions, the Sub-Commission should always reach a decision on the substance of a proposal. He had abstained in the votes on both the proposal by Mr. Alfonso Martinez and the amendment by Mrs. Chavez because, in his view, the information they had provided had not been sufficiently verified and the decision to act had been rather sudden.

73. Mr. ALFONSO MARTINEZ said that, even if it had been his intention to return to the cold war, which it certainly had not, there was no such risk.

For Mr. Eide's benefit, he explained that he had simply drawn the Sub-Commission's attention to a situation which he found disturbing, as Mr. Eide had already done on several occasions. Furthermore, the Government of Cuba had provided official information under the 1503 procedure on the situation of all the people mentioned by Mrs. Chavez, and that confidential information was available to any of the experts who wished to consult it.

74. Mr. YOKOTA said he agreed with Mr. Chernichenko that the members of the Sub-Commission did not have sufficient information to take a decision on the substance of the proposal and the amendment. In the case of the latter, he had abstained because he believed that human rights violations should be examined case by case and not in connection with another violation. That said, he understood Mrs. Chavez's concern and was prepared to support her proposal under other circumstances.

75. Mrs. KSENTINI said that the purpose of the amendment by Mrs. Chavez had been to prevent a vote from being held on the proposal by Mr. Alfonso Martinez. That was why she had voted against it, since she agreed with Mr. Yokota that it should have been proposed under other circumstances. She had abstained on the proposal by Mr. Alfonso Martinez because she was not convinced that the Sub-Commission should ask Governments for information every time an incident occurred. She regretted that the discussion had not been a calmer one.

76. Mr. DESPOUY said he wished to point out that he was abstaining from commenting on his abstention.

The meeting rose at 6.05 p.m.